

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Patel et al.

Serial No. 10/613,698

Attorney Docket No.: 03-40102US

Filing Date: July 3, 2003

**DELIVERY SYSTEM FOR TOPICAL MEDICATIONS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPLICANT'S INTERVIEW SUMMARY**

Sir:

Applicant hereby submits this Interview Summary regarding the telephonic interview with Examiner Isis Ghali and Applicant's attorneys William J. McNichol, Jr. (with Maryellen Feehery Hank and Jenny Papatolis Johnson present) on April 28, 2010. Applicant further submits an Interview Summary for the follow-up telephonic interview with Examiner Isis Ghali and Applicant's attorney Jenny Papatolis Johnson on May 5, 2010.

**April 28, 2010 Examiner Interview**

Claims 4, 5, 8-12 and 34-50 and Examiner's 35 U.S.C. 112, first and second paragraph rejections were discussed. The Declaration of Eugene H. Gans, Ph.D., filed on April 7, 2010, was also discussed.

Applicant's attorneys pointed out that insoluble, dermatologically active ingredients are widely known in the art. Applicant's attorneys referenced the Declaration of Eugene H. Gans, Ph.D. (a person of ordinary skill in the art) and the evidence attached thereto to support this

statement. Applicant's attorneys further emphasized that given that insoluble, dermatologically active ingredients are widely known in the art, one skilled in the art would be able to apply this base knowledge of insoluble, dermatologically active ingredients with the disclosures in Applicant's specification to practice Applicant's invention.

Applicant's attorneys also pointed out that relative terms, such as "less than about" and "up to about" are not indefinite. Examiner Ghali indicated that removing the term "about" from the claims may lead to allowable subject matter and Applicant's attorneys indicated that such a proposal may be agreeable.

Examiner Ghali indicated that she would consider Applicant's arguments and the Declaration of Eugene H. Gans, Ph.D. in due course.

#### **May 5, 2010 Examiner Interview**

Examiner Isis Ghali contacted Applicant's attorney Jenny Papatolis Johnson on May 5, 2010 indicating that the application is in condition for allowance subject to the following changes:

- (1) Removing "about" in claims 4, 34 and 35 so that the relevant portions read as follows:
  - (a) claim 4, lines 10-11: "benzoyl peroxide particles of less than 50 microns"
  - (b) claim 34, lines 10-11: "active ingredient comprises particles of up to 300 microns"
  - (c) claim 35, lines 10-11: "active ingredient comprises particles of less than 50 microns"
- (2) Authorization to cancel the withdrawn claims that are directed to a non-elected invention with traverse.

Applicant's attorney agreed with the Examiner's proposal and authorized the Examiner to amend the claims by Examiner's Amendment.

Applicant does not believe any fee is required for this Interview Summary, however, in the event any fee is required, the Commissioner is authorized to charge Deposit Account No. 18-0586.

Respectfully submitted,

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